



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201114044

JAN 25 2011

Uniform Issue List: 402.00-00

SET: EP: RACT4

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Taxpayer B = XXXXXXXXXXXXXXXXXXXX

Executrix W = XXXXXXXXXXXXXXXXXXXX

Annuity X = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Account Z = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
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Form A = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Financial Institution L = XXXXXXXXXXXXXXXXXXXX

Financial Institution M = XXXXXXXXXXXXXXXXXXXX

Financial Institution N = XXXXXXXXXXXXXXXXXXXX

Employer M = XXXXXXXXXXXXXXXXXXXX

Court B = XXXXXXXXXXXXXXXXXXXX

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Amount D = XXXXXXXXXXXXXXXX

State L = XXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXX

Date 5 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your ruling request dated February 25, 2010, as supplemented by correspondence dated October 21, 2010, and November 11, 2010, submitted by your authorized representative, in which you, as the Court Appointed Executrix of Taxpayer A, request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code ("Code") as applicable to an annuity described in Code section 403(b) pursuant to Code section 403(b)(8)(B) for a distribution from Annuity X.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Executrix W represents that Taxpayer A, age 89, received a distribution from Annuity X, a tax sheltered annuity retirement account described in Code section 403(b), totaling Amount D. Executrix W asserts that Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(A) was due to Taxpayer A's death.

Executrix W represents that Taxpayer A was married to Taxpayer B, who died on Date 1. Taxpayer B named Taxpayer A as beneficiary under Annuity X which was sponsored by Employer M and administered by Financial Institution L. On Date 2, Taxpayer A signed Form A to receive the distribution. On Date 3, Financial Institution L distributed Amount D from Taxpayer B's Annuity X account, into Account Z, a non-IRA account at Financial Institution N. On Date 4, Taxpayer A died.

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Executrix W asserts that, on Date 5, under Taxpayer A's Last Will and Testament she was appointed as Independent Executrix of Taxpayer A's estate; and has submitted Letters of Independent Executrixship issued by Court B located in State L. Executrix W now wishes to complete the rollover of Amount A on behalf of Taxpayer A.

Executrix W represents that prior to Taxpayer A's death she served as attorney-in-fact pursuant to a Durable General Power of Attorney signed on Date 2, and is aware that Taxpayer A signed Form A on the same date. Section 6 of Form A permits the beneficiary to elect to roll over directly to an IRA. Taxpayer A did not make such an election. Executrix W asserts that because Taxpayer A died 12 days after the distribution Taxpayer A did not have adequate time in which to roll over Amount D from Annuity X. Taxpayer A had been in hospice care since before her late husband's death on Date 1, until she died on Date 3. She required assistance with her living arrangements, and her financial and legal affairs. During their marriage, Taxpayer B had handled the business and financial matters. Taxpayer A maintained IRA Y at the time of the distribution of Amount D.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from Annuity X.

With respect to your request to waive the 60 day rollover requirement, section 403(b)(1)(E) of the Code provides, in relevant part, that any amount distributed out of an annuity contract described in section 403(b)(1) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Code section 403(b)(8)(A) provides that if any portion of the balance to the credit of an employee in a 403(b) annuity contract is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), and the employee transfers any portion of the distribution to an eligible retirement plan described in section 402(c)(8)(B), then the distribution to the extent transferred shall not be includible in gross income for the taxable year in which it was distributed.

Section 403(b)(8)(B) provides that rules similar to the rules of paragraphs (2) through (7) and (9) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of

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property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(c)(4) of the Code defines "eligible rollover distribution". Excepted from the definition of "eligible rollover distribution" is any distribution required under Code section 401(a)(9).

Section 402(c)(8) defines an eligible retirement plan for purposes of subsection (c) as including an IRA described under section 408(a).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted on behalf of Taxpayer A does not reveal that she or Executrix W, who had a durable general power of attorney, intended to roll over Amount D into a rollover IRA at the time the distribution was requested. Taxpayer A could have elected, but did not elect, a rollover when she signed Form A on Date 2.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from Annuity X.

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No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact XXXXXXXX, ID Number XXXXXX, SE:T:EP:RA:T4 at XXXXXXXXXXXX.

Sincerely yours,



Ador Perry
Laura Warshawsky, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose